

Remarks

Claim 1 remains pending in this application. Claim 1 stands rejected under 35 U.S.C. § 112, first paragraph.

35 U.S.C. § 112, first paragraph: New Matter

The Examiner has rejected claim 1 under 35 U.S.C. § 112, first paragraph, asserting that new matter has been added by Applicants' amendment of Claim 1 as filed in the Response to Non-final Office Action mailed February 4, 2004. Specifically, the Examiner states that the recitation "replacement ...by other amino acids broadens the scope of claim 1 since the substitutions now include the other 19 naturally occurring amino acids as well as non-naturally occurring amino acids.

Applicants respectfully traverse this rejection. First, Applicants are not claiming human IL3 variants having non-naturally occurring amino acids. Second, as to naturally occurring amino acids, the specification describes in detail the amino acid replacement suitable for the claimed hIL-3 variants and the methods of creating such variants. *See e.g., Paragraph 57*, "One method of creating the preferred hIL-3 (15-125) mutant genes is cassette mutagenesis [Wells, et al. (1985)] in which a portion of the coding sequence of hIL-3 in a plasmid is replaced with synthetic oligonucleotides that encode the desired amino acid substitutions in a portion of the gene between two restriction sites. In a similar manner amino acid substitutions could be made in the full-length hIL-3 gene . . .".

35 U.S.C. § 112, first paragraph: Written Description

The Examiner has rejected claim 1 under 35 U.S.C. § 112, first paragraph, asserting that it recites subject matter which was not described in the specification in such a way as to convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the Examiner states that the claim term "hIL-3" is indefinite in that it is unknown how many different IL-3 molecules are encompassed by the claim.

Applicants respectfully traverse this rejection. The claim term "hIL-3" defines a known, naturally occurring hematopoietic growth factor. (*See, e.g.*, U.S. Patent No. 4,877,729, Figure 2 and supporting text). As disclosed by Applicants, hIL-3 is found in humans in two distinct forms. *See Paragraph 9*, where two allelic forms of hIL-3 are identified, namely one having serine at position 8 and one having proline at position 8. Because the claim term "hIL-3" is clearly described as a hematopoietic growth factor that exists in one of two naturally occurring forms, the recitation thereof in Claim 1 is sufficiently definite to convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

In light of the foregoing remarks, Applicants respectfully request the rejections be withdrawn and the case pass to issuance.

Respectfully submitted,

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